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In the Supreme Court of the United States

October Term, 1993

GARY G. GRAHAM and CHRISTOPHER LITRAS
Petitioners

v.

ROBERT A. BUTTERWORTH, State of Florida Attorney General, and BRADLEY E. KING, State Attorney for the Fifth Judicial Circuit
Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

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51 pp

QUESTIONS PRESENTED

1. Whether government officials, who have issued an official opinion that a judicial candidate's political speech has violated state law, can moot subsequently filed litigation by the candidate and his supporter challenging the constitutionality of the state statute on First Amendment grounds, simply by changing their interpretation of the questioned statute and promising not to prosecute?

2. Whether the decision below -- that a prosecutor's assurances to exclude the petitioners' political speech from the coverage of a challenged statute mooted the case -- directly conflicts with well established Supreme Court mootness jurisprudence?

3. Whether the decision below -- that a party has no "overbreadth" standing to challenge a statute unless the statute regulates plaintiffs' speech -- is incorrect and contrary to Supreme Court jurisprudence governing constitutional "overbreadth" challenges?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were petitioners, Gary G. Graham and Christopher Litras, and respondents Robert A. Butterworth, Attorney General of the State of Florida, and Bradley E. King, State Attorney for the Fifth Judicial Circuit of Florida. The same parties are before this Court. There are no parties to this action within the scope of Supreme Court Rule 29.1.

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Petitioners, Gary G. Graham and Christopher Litras, respectfully petition this Court to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit, entered in this civil proceeding on October 25, 1993.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 5 F.3d 496 and is reprinted in the Appendix at 1a. The denial of petitioners' petition for rehearing and suggestion for rehearing *en banc* by the United States Court of Appeals for the Eleventh Circuit is reported at 14 F.3d 60 (table) and is reprinted in the Appendix at 20a.

The district court opinion and order denying petitioners' motion for summary judgment and granting respondents' cross-motion are unpublished and are reprinted in the Appendix at 10a.

JURISDICTION

This action, brought pursuant to 42 U.S.C. § 1983, is within federal court subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

The United States District Court for the Middle District of Florida entered final judgment on October 6, 1992, and petitioners timely invoked the appellate jurisdiction of court of appeals, 28 U.S.C. § 1291, by filing their notice of appeal on November 3, 1992.

The Eleventh Circuit, on October 25, 1993, entered judgment dismissing petitioners' action as moot. Appendix 1a. However, petitioners timely filed their petition for rehearing and suggestion for rehearing *en banc* on November 9, 1993, within the 21 days allowed by Eleventh Circuit Rule 40-2. The Eleventh Circuit denied this petition and suggestion on January 14, 1994. Appendix 20a.

Petitioners now invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1), by filing this petition within the ninety day time period provided by 28 U.S.C. § 2101(c).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case implicates Amendment I of the United States Constitution. This case also implicates Fl. Stat. §§ 105.071(11) and 104.43. The full text of these provisions is reprinted in Appendix at 22a.

STATEMENT OF THE CASE

Petitioners Gary Graham, then a County Court Judge for Citrus County, Florida, and Christopher Litras, a registered voter and a supporter of Graham for reelection, commenced this action in the Middle District of Florida on March 16, 1992, pursuant to 42 U.S.C. § 1983. They sought declaratory and injunctive relief against the enforcement of Fla. Stat. § 105.071(11), which prohibits judicial candidates from paying for certain political advertisements.

On July 20, 1992, the parties filed cross motions for summary judgment. On October 6, 1992, the district court denied petitioners' motion and granted respondents'. On November 3, 1992, petitioners timely appealed to the United States Court of Appeals for the Eleventh Circuit. A panel of that court, consisting of Judges Hatchett, Fay, and Johnson, heard oral argument on August 31, 1993. It dismissed the appeal for mootness on October 25, 1993. It also found that petitioners had no standing to raise an overbreadth challenge. Petitioners' petition for rehearing and suggestion for rehearing *en banc* was denied on January 14, 1994. Petitioners now seek review by this Court.

The substantive facts are undisputed. In 1990, Graham was a candidate for reelection to the office of County Court Judge for Citrus County, Florida. Litras, a citizen and registered voter in Citrus County, supported Graham's candidacy. As part of his campaign, Graham paid for the printing of 5,000 postcards reading: "I am supporting Judge Graham because:_____." The space provided allowed the recipient to write his or her reasons for supporting Graham's candidacy. During the period from August 1 to August 20, 1990, Graham, Litras and others distributed 50 to 100 such postcards to voters.

Additionally, Graham received unsolicited letters of support from voters within his judicial district. With the written permission of the authors of these letters, Graham had some of them reprinted as part of his paid political newspaper advertisements.

During the 1990 campaign, Charles P. Horn, Graham's opponent, publicly accused Graham of violating Fla. Stat. § 105.071(11), reprinted in the Appendix at 23a-24a, which prohibits judicial candidates from agreeing to paying for "all or any part of any advertisement sponsored by any person, group, or organization wherein the candidate may be endorsed . . . by any such person, group, or organization." Horn asserted that the postcards and the published letters of support violated the statute.

Graham then spoke with Ric Ridgeway, State Attorney King's Chief Assistant, who told Graham that the statute's meaning was unclear and that Graham would have to proceed at his own risk. Horn subsequently wrote State Attorney King concerning Graham's alleged violations. After discussions

between Graham and King, King informed Horn by letter that the postcards and the reprinting of the letters violated the statute. However, King also added that he would take no further action unless Horn demanded a grand jury investigation pursuant to Fla. Stat. § 104.43,[1] because his investigation found no criminal intent. Horn replied that he did not want a grand jury investigation, so King took no further action.

In November, 1990, Graham was reelected. He and Litras then brought this lawsuit challenging the constitutionality of Fla. Stat. § 105.071(11). After the commencement of this litigation, *for the first time*, in an obvious attempt to avoid a ruling on this Constitutional challenge, respondents changed their position concerning the scope of the Florida statute. Notwithstanding King's prior official interpretation that the postcards and newspaper advertisements violated Fla. Stat. § 105.071(11), respondents have defended this litigation based on their new position (without any authoritative ruling from the Florida courts) that the statute does not govern the petitioners' postcards and advertisements.

The United States District Court for the Middle District of Florida found that Graham had no standing to challenge Fla. Stat. § 105.071(11) and refused to reach Graham's constitutional challenges. On appeal, the United States Court of Appeals for the Eleventh Circuit found that

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[1]Fla. Stat § 104.43, reprinted at 22a, authorizes any registered voter or candidate to demand a grand jury investigation. Upon such a demand, the State Attorney has no discretion to refuse to present the matter to the Grand Jury.

Graham and Litras had standing, but not "overbreadth" standing, to challenge the Florida statute facially. Furthermore, the court held that the prosecutor's change in position had mooted their case.

Graham intends to run for office again and Litras intends to support him. Graham and Litras intend to distribute the postcards and reprint unsolicited letters of support in local newspapers as they did in the election that led to this litigation. In light of Fla. Stat. § 104.43, the wording of the statute, and King's original interpretation of the statute, petitioners fear prosecution as a result of their advertisements.

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit's Decision -- That the Prosecutor Has Mooted the Case by Post-Litigation Promises to Exclude Petitioners' Political Speech From the Coverage of the Challenged Statute -- Directly Conflicts With Established Supreme Court Jurisprudence and Serves to Immunize Government Actions From Constitutional Scrutiny

The United States Court of Appeals for the Eleventh Circuit determined that petitioners Graham and Litras had standing to challenge Fla. Stat. § 105.071(11), because Graham was threatened with prosecution under the statute. Appendix 5a-6a. Nonetheless, the court found that the respondents had successfully mooted the case by promising, after this law suit had been filed, not to prosecute and by changing their interpretation of the statute to exclude petitioner's political advertisements. Appendix 7a-9a. The

court reasoned that since respondents had withdrawn their original determination and had informed the petitioners that the proposed advertising campaign fell outside the scope of the statute, respondents could not "seek prosecution against" the petitioners" and "no possibility exists that the [respondents] will seek to enforce the challenged statute. . . ." *Id.* at 7a.

The Eleventh Circuit's decision is contrary to this Court's relevant jurisprudence and it establishes a dangerous exception to the mootness doctrine in First Amendment free speech cases. This Court consistently has recognized that a government defendant cannot moot a pending Constitutional challenge either by changing its interpretation of the statute or by promising not to prosecute. *See, e.g., Northeastern Florida General Contractors v. City of Jacksonville*, __ U.S. __, 113 S.Ct. 2297, 2301 (1993); *City of Mesquite v. Aladdin's Castle*, 455 U.S. 283, 289 (1982); *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979); *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974) (per curiam); *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953).

Long ago, this Court held that "voluntary cessation of allegedly illegal conduct ... does not make the case moot," and "a dispute over the legality of the challenged practices ... may remain to be settled in such circumstances." *W.T. Grant*, 345 U.S. at 632. A defendant's freedom to return to his old ways, along with the public interest in settling the legality of the questioned practice, "[militate] against a mootness conclusion." *Id.* Thus, defendants bear a "heavy burden" of showing "'no reasonable expectation that the wrong will be repeated.'" *Id.* at 633, *quoting United States v. Aluminum Co. of America*, 148 F.2d 416, 448 (2d Cir. 1945).

In *City of Mesquite*, this Court reaffirmed the well-established rule of *W.T. Grant* that the "voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite*, 455 U.S. at 289. Furthermore, this Court recently applied the "well settled" rule of *City of Mesquite* to a constitutional challenge of a minority "set-aside" statute in *Northeastern Florida General Contractors*, 113 S. Ct. at 2301. There, this Court held that even an outright elimination of the challenged statutory language will not moot a pending challenge to it. *Id.*

For the voluntary cessation of official conduct to moot a case, two conditions must be met. First, there must be "*no reasonable expectation*" that the wrong would be repeated and second, "interim relief or events [must] have *completely and irrevocably* eradicated the effects of the alleged actions." *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (citations omitted) (emphasis supplied). Citing *W.T. Grant* at 632-33, this Court held that the burden of the moving party (*i.e.*, the party contending that the case is moot) remains a "heavy one." *Davis*, 440 U.S. at 631.

Recent circuit court decisions have underscored the concerns evinced by this Court in *W.T. Grant* and subsequent cases. In *Charles v. Daley*, 749 F.2d 452 (7th Cir. 1984), the Seventh Circuit refused to treat as moot a challenge to an Illinois abortion law that had been amended during the pendency of the case's appeal. 749 F.2d at 458. That court, relying on this Court's mootness cases, held that "*eradication*" of "chilling effects caused by [the challenged statute]" is a "*prerequisite to mootness*." *Id.* (emphasis supplied).

The Tenth Circuit in *Longstreth v. Maynard*, 961 F.2d 895 (10th Cir. 1992), similarly held that the revision of a challenged Oklahoma Department of Corrections' policy during appeal did not moot the case because the court did "not feel it [had been] shown to be *absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur." 951 F.2d at 900-901 (emphasis supplied). The court cited *City of Mesquite*'s "well settled" holding that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." 961 F.2d at 901, *citing City of Mesquite*, 455 U.S. at 289.

Even a district court's approval of amendments to a challenged county ordinance has been held not to moot a challenge to the ordinance. *Coral Construction Co. v. King County*, 941 F.2d 910, 928 (9th Cir. 1991). Furthermore, a challenged statute lapsing from passage of time does not moot a case if "the law has not changed because of an amendment, but lies dormant, ready to be brought back to life if the need for it reoccurs." *Leonardson v. City of East Lansing*, 896 F.2d 190, 194 (6th Cir. 1990).

Before this case, the Eleventh Circuit had recognized the well established rule of *City of Mesquite*. *See, e.g., ACLU v. The Florida Bar*, 999 F.2d 1486, 1495-96 (11th Cir. 1993); *Dimmitt v. City of Clearwater*, 985 F.2d 1565, 1572 and n.5 (11th Cir. 1993); *Solomon v. City of Gainesville*, 763 F.2d 1212, 1213 and n.1 (11th Cir 1985). It previously had determined that a city official's promise to discontinue prosecutorial action against a business allegedly in violation of a city ordinance failed to moot a case. *Solomon*, 763 F.2d at 1213 n.1.

However, in the instant case, the Eleventh Circuit, in a published decision, has created a dangerous exception to established First Amendment jurisprudence by allowing a prosecutor, *at will*, to stifle a First Amendment challenge to an overbroad and oppressive statute simply by changing his interpretation of the statute during any subsequent litigation. The Eleventh Circuit's suggestion that "no possibility exists" that respondents will enforce the statute is incorrect. There has been no trial or finding of fact or law on this issue. The lower court's conclusion that the respondents "cannot seek prosecution against" the petitioners (Appendix 7a) is directly contradicted by Fla. Stat. § 104.43, *see* Appendix, 22a, which *requires* a grand jury investigation into an alleged violation of the election code, such as the one at issue, simply upon request by a candidate or voter.

Because the respondents are without discretion and *must* initiate a grand jury investigation at the request of any candidate or voter, the court's "impossibility" finding is mistaken. By virtue of Fla. Stat. § 104.43 alone, the threat of prosecution continues to weigh heavily on Graham and other judicial candidates and has a chilling effect on their right to free speech as protected by the First Amendment. Furthermore, nothing binds the respondents to honor their promise. The Florida Attorney General or State Attorney could at any time and with impunity decide to bring up charges against Graham or any other judicial candidate, even during an election campaign, when such action would be the most damaging, notwithstanding the respondents' contrary suggestion.

Thus, petitioners have a reasonable expectation that the threat of prosecution could quite easily be repeated. The

prosecutor's arbitrary reinterpretation of the statute -- after the commencement of this litigation -- cannot moot this case. *See Davis*, 440 U.S. at 631. Fla. Stat. § 105.071(11) remains completely unaltered and, especially in light of Fla. Stat. § 104.43, poses a threat to the First Amendment rights of the petitioners and others. Even if respondents do not prosecute petitioners, the statute's chilling effect upon Graham and any other judicial candidates remains, requiring all candidates to limit the scope of their campaign speech. The threat of prosecution is by no means "impossible." The prosecutor's actions have not mooted this political speech case.

More importantly, the Eleventh Circuit's ruling has a damaging impact far beyond this case. The exercise of all fundamental constitutional rights -- even beyond those involving crucial First Amendment political speech -- is threatened if government authorities can moot constitutional litigation at will simply by changing their interpretation of a challenged statute's scope every time a constitutional challenge is filed. In effect, the ruling below can be relied upon to immunize from judicial scrutiny all governmental conduct threatening core, fundamental rights. Under the Eleventh Circuit's decision, the challenge to the governmental conduct and the underlying statute is "mooted" whenever a government official, after using the challenged statute to disparage or deter a candidate, conveniently changes his or her statutory interpretation once a suit is filed challenging the statute. Similarly, under the Eleventh Circuit's decision, a challenge to a statute restricting abortions easily could be mooted by state officials who -- after threatening prosecution -- change their interpretation of the statute when a litigant files suit challenging the statute. Challenges to statutes creating classifications based on alienage, gender, or race, likewise

could be easily mooted by interpretations of convenience proffered after a litigant files suit challenging the statute. Thus, the Eleventh Circuit's decision immunizes a wide range of harassing governmental conduct from judicial scrutiny.

This Court has never granted governmental entities the authority to moot constitutional challenges to statutes simply by tendering a subsequent interpretation as a "defense" to a constitutional lawsuit. Nor has this Court ever authorized officials to immunize their threats under questionable statutes from constitutional scrutiny by subsequent promises not to prosecute. Yet, the Eleventh Circuit's decision publicly authorizes both. This Court should grant a writ of certiorari to consider the Eleventh Circuit's dangerous precedent.

II. The Eleventh Circuit's Ruling That Petitioners Have No "Overbreadth" Standing, Because Fla. Stat. § 105.071(11) Does Not Regulate Their Conduct, Conflicts with This Court's First Amendment Overbreadth Jurisprudence

Petitioners facially challenged Fla. Stat § 105.071(11) on overbreadth grounds. However, in addition to ruling that the prosecutor's change of statutory interpretation of Fla. Stat. § 105.071(11) mooted this case, the Eleventh Circuit also concluded that the petitioners did not have standing to raise a facial overbreadth challenge to Fla. Stat. § 105.071(11). The Eleventh Circuit reasoned: "Because the challenged statute does not regulate the conduct that the [petitioners] intend to engage in, they do not have standing to raise an overbreadth challenge to the statute." Appendix, 9a n.3. This finding, in addition to evidencing a misunderstanding of the scope of the

challenged statute, directly contradicts all binding Supreme Court jurisprudence defining the "overbreadth" doctrine.

This Court has emphasized that "[s]peech on public issues occupies the 'highest rung of hierarchy of First Amendment values,' and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983), *citing NAACP v. Claiborne Hardware Co.*, 458 886 (1982). In furtherance of this fundamental right, this Court consistently has upheld plaintiff's standing to challenge a statute on First Amendment grounds, even where plaintiff's conduct falls outside the ambit of the statute. *See, e.g., Board of Trustees v. Fox*, 492 U.S. 469, 484 (1989); *Village of Schaumberg v. Citizens for a Better Environment*, 444 U.S. 620, 634 (1980); *Grayned v. City of Rockford*, 408 U.S. 104, 114 (1972); *Thornhill v. Alabama*, 310 U.S. 88, 97 (1940); *Lovell v. Griffin*, 303 U.S. 444, 450-52 (1938). Thus, a plaintiff can raise the rights of others not before the court who will be affected by the statute where the Constitutional challenge is based on the First Amendment. *Virginia v. American Booksellers*, 484 U.S. 383, 392-93. A plaintiff need not qualify as a member of the injured class. *Id.*

Furthermore, this Court has established that persons subject to the statute may urge the Constitutional rights of others not appearing before the court. *Massachusetts v. Oakes*, 491 U.S. 576 (1989). First Amendment overbreadth "is an exception to the general rule that a person to whom a statute may be constitutionally applied cannot challenge the statute on the ground that it may be unconstitutionally applied to others." *Id.* at 581. "[A] judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or

expression" and not the litigant's "own rights of free expression" permits challenge to a statute. *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). This rule clearly applies in the instant case, where others, such as voters, who are directly affected by statute (which regulates the campaign speech they receive), do not have the time, tenacity, or money to pursue arduous constitutional litigation.

As the Eleventh Circuit's opinion acknowledges, Graham and Litras challenged the Florida statute *facially*. *See* Appendix at 9a, n.3. Yet, that court denied them overbreadth standing. The effect of the Eleventh Circuit's ruling is to substantially undermine facial overbreadth challenges in First Amendment cases. By requiring that the challenging party's speech, conduct, or activities be directly within the scope of -- and currently in violation of -- the challenged statute, the Eleventh Circuit erroneously has equated the "overbreadth" standing doctrine with "as applied" standing, to the detriment of the First Amendment.

Furthermore, this Court has analyzed First Amendment overbreadth standing to challenge a statute on its face in light of the statutory interpretation proffered by the plaintiff. *See generally, American Booksellers*, 484 U.S. at 392-93. However, under the Eleventh Circuit's decision, the prosecutor's *current* interpretation governs. Members of the public-at-large are no longer at liberty to challenge the constitutionality of statutes regulating core First Amendment speech unless their speech also happen to be undisputedly within that prohibited by the statute -- as "currently" interpreted by the prosecutor. However, as this case illustrates, "overbroad" statutes frequently are "vague" statutes, and what is deemed to fall within their ambit is often

delineated by little more than executive or prosecutorial opinion, subject to change at the prosecutor's whim.

Overbreadth standing should not depend on the government's opinion regarding whether a plaintiff's speech is within the scope of a challenged statute. Indeed, the purpose of the doctrine is to protect against the exact arbitrary official action that the Eleventh Circuit has sanctioned in this case. Yet, the Eleventh Circuit's ruling has subverted this First Amendment doctrine. When the government opines that the conduct in question is within the scope of the statute, the plaintiff has standing. However, as here, where the government changes its mind and determines that the speech in question falls outside the statute, the plaintiff loses his standing. Thus, the purpose of the doctrine -- to protect against the "chilling effect" of overbroad statutes aimed at curbing the exercise of First Amendment rights -- is undermined to the detriment of the core protections afforded by the First Amendment.

The ruling in this case illustrates the potentially broad impact of the Eleventh Circuit's decision on subsequent cases. Graham, as a person who intends to run for judicial office, and Litras, as a Graham supporter, clearly are persons governed by the challenged restrictions of Fla. Stat. § 105.071(11), especially since they had been informed by respondent King that their advertisements violated the statute. Nevertheless, the Eleventh Circuit has deprived them of this standing based upon the prosecutor's newly (and conveniently) found opinion that their political advertisements did not violate the statute. Thus, under the decision below, even those who are officially accused of violating a statute can be deprived of "overbreadth" standing to challenge it.

Under this Court's overbreadth jurisprudence, even if petitioners' advertisements did not violate the statute, Graham and Litras still would have overbreadth standing to challenge it, because they were persons who were *governed* by it. *See, e.g., Fox*, 492 U.S. at 484; *American Booksellers*, 484 U.S. at 392-93; *Village of Schaumberg*, 444 U.S. at 634; *Grayned*, 408 U.S. at 114; *Thornhill*, 310 U.S. at 96; *Lovell*, 303 U.S. at 452. That statute plainly *governs* all political advertisements in all judicial campaigns, including the advertisements used by Graham and Litras. Not only does this broadly worded statute prohibit the types of political advertisement involved herein, it also potentially prohibits a broad array of political advertisements. The terms of Fla. Stat. § 105.071(11), given their plain meaning, prohibit almost all (if not all) advertisements in judicial campaigns.[2] As a

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[2] The statute forbids judicial candidates to pay for "advertisements," "sponsored by any person, group or organization" which contain an endorsement of the judicial candidate. Webster's College Dictionary (Random House, 1991) defines "sponsor" as "one who vouches or is responsible for a person or thing." *Id.* at 1293. Thus, even if "sponsored by" is defined narrowly as "paid for" (as suggested by the district court), any judicial candidate (a "person"), upon "paying for" an advertisement that includes a third-party endorsement, would be a "sponsor" in violation of the statute's "plain language."

The "plain meaning" of the terms of the statute also would prohibit a judicial candidate from paying for and running a newspaper advertisement supporting and endorsing his or her own candidacy. Certainly, the candidate is a "person" who "sponsors" himself or herself through the advertisement paid for with his or her own money. Nothing

judicial candidate and a supporter subject to the regulation of the statute, petitioners certainly are appropriate persons to challenge its overbroad scope, even assuming arguendo that their advertisements did not violate the statute.

Yet, under the Eleventh Circuit's narrow interpretation of the overbreadth standing doctrine, Graham and Litras are precluded from challenging the broad impact of this statute, because the prosecutor has changed his mind and decided, *after this lawsuit was filed*, that their advertisements do not *violate* the statute. But, a *violation* has never been a mandatory predicate for overbreadth standing. Because Graham and Litras remain within the class of persons regulated by the statute (*i.e.*, Florida judicial candidates and their supporters), they have overbreadth standing to challenge it, whether or not the political advertisements at issue can be considered to be violative of the statute.

The Eleventh Circuit's ruling is dangerous, because it reduces the overbreadth standing doctrine, as well as the question of constitutional mootness, to the government's arbitrary opinion regarding what is within and what is without a statute's coverage. That interpretation conflicts with this Court's jurisprudence, to the prejudice of core First Amendment rights. This Court should grant petitioners'

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in the statute defines the judicial candidate himself as being outside the scope of class of "persons" "sponsor[ing]" a candidate under the statute. Thus, the statute potentially includes a full array of political advertisements beyond those involved in this case.

petition to consider the correctness of the Eleventh Circuit's ruling.

CONCLUSION

The Eleventh Circuit's decision conflicts with well-established Supreme Court jurisprudence governing mootness and overbreadth standing in First Amendment free speech challenges. Under this precedent, the potential for official infringement on the Constitutional rights of judicial candidates and the electorate is significant and real. Petitioners Graham and Litras respectfully request that the Court grant their petition and issue a writ of certiorari to the Eleventh Circuit.

Respectfully submitted,

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